IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2859 of 2003
with
CRIMINAL MISC.APPLICATION No 10615 of 2003
with
CRIMINAL MISC.APPLICATION No 10616 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DASHRATHBHAI BHOLIDAS PATEL

Versus

STATE OF GUJARAT

Appearance:

MR SB VAKIL FOR MR YOGESH S LAKHANI for Applicants
MR RK MISHRA for Applicants
MR AD OZA, PUBLIC PROSECUTOR for Opponent No.1
MR RAJESHWAR J DAVE for Opponent No. 1
MR KG VAKHARIA FOR MR TUSHAR MEHTA for Opponent No. 2

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 23/02/2004

COMMON C.A.V. JUDGEMENT

Rule. Mr.A.D.Oza, learned Public Prosecutor with Mr.R.J.Dave, learned counsel for the complainant and Mr.K.G.Vakharia, learned Senior Counsel for Mr.Tushar Mehta, waive service of notice of rule on behalf of the respondent Nos.1 and 2 respectively.

2. These three applications have been filed under Sec.439 of the Code of Criminal Procedure as they are in judicial custody in connection with Crime Register No.I-452 of 2002 registered with Naranpura Police Station for the alleged commission of offences punishable under Secs.167, 406, 420, 467, 468 and 471 read with 120-B of the Indian Penal Code and Sec.46 of the banking Regulation Act.

3. As all these applications arise out of a common crime register number of Naranpura Police Station, all these applications are heard together and are being decided by this common order.

4. The case in short is that a complaint was filed by the complainant on 30-8-2002 alleging that the Board of Directors and other office bearers of Visnagar Nagrik Co-Operative Bank Limited committed financial irregularities in collusion with the applicants and their allied companies to the tune of Rs.46.00 crores resulting into huge financial loss to the bank by committing breach of directions given by the Reserve Bank of India and provisions of Banking Regulation Act and transactions were done by the bank as well as the applicants. Said complaint was registered as Naranpura Police Station Crime Register No.I-452 of 2002 and police started investigation.

5. As far as applicant of Cri.Misc.Appln.No.2859 of 2003 is concerned, he has been taken into judicial custody on 16-3-2003. He has preferred Cri.Misc.Appln.No.614 of 2003 in the Court of learned City and Sessions Judge wherein after giving opportunity to the parties concerned, learned Addl. Sessions Judge, Court No.9, Ahmedabad City, rejected the same on merits on 9-4-2003.

6. As far as applicants of Cri.Misc.Appln.No.10615 and 10616 of 2003 are concerned, they have been taken into judicial custody on 3-12-2003. They have preferred Cri.Misc.Appln.Nos.3208 and 3209 of 2003 respectively in

the Court of learned City and Sessions Judge wherein after giving opportunity to the parties concerned, learned Addl. Sessions Judge, Ahmedabad City, rejected the same on merits vide common order dated 18-12-2003.

7. Thereafter, present applications have been filed by the applicants. During the pendency and final disposal of these applications, applicant of Cri.Misc.Appln.No.2859 of 2003 has prayed for temporary bail wherein this Court vide order dated 8-5-2003 granted temporary bail for a period of three months on condition to deposit an amount of Rs.3.00 crores. Said order was passed with the consent of Mr.A.D.Oza, learned Public Prosecutor for the State, Mr.R.J.Dave, learned counsel for original complainant bank and Mr.B.B.Naik, learned counsel appearing for the Depositors Association. However, these applications could not be disposed of till date though matters have been moved in various Courts as per the roster. Had the learned counsels for the respective parties been keen in proceeding with the matters, same could have been disposed of earlier. Ultimately, as per the present roster, again these matters have come up before this Court.

8. Heard learned Senior Counsel, Mr.S.B.Vakil for Mr.Y.S.Lakhani for the applicants, Mr.A.D.Oza, learned Public Prosecutor with Mr.R.J.Dave, learned Standing Counsel for the original complainant bank for the opponent No.1 and learned Senior Counsel, Mr.K.G.Vakharia for Mr.Tushar Mehta for the respondent No.2-Ahmedabad District Co-Operative Bank Ltd. in all these matters.

9. It is mainly submitted on behalf of the applicants that they are Income Tax payers who are engaged in the business of land development, construction and investment and managing number of companies popularly known as Pioneer Group of Companies. The said group of companies have availed financial assistance from the complainant bank by executing necessary security documents as required by the bank of the properties described in these applications and furnishing reports of Government approved valuers. Since the properties offered were not meeting with the requirements of the bank, further securities were also offered. Inspite of severe financial crisis, the said group of companies have continued to repay the instalments as narrated in these applications. When the complainant bank was declared as Weak Bank by the Reserve Bank of India on 4-2-2002, transfer of mortgage rights were signed by the applicants and their family members as confirming party and executed between the bank and the Ahmedabad District Co-Operative

Bank Ltd. and thereby the bank could obtain cash credit to the extent of Rs.75.00 crores from the Ahmedabad District Co.Op.Bank Ltd. as against the loan of Rs.37.50 crores advanced against the Pioneer Group of Companies. Inspite of this, since the complainant bank suffered cash crunch, it asked the Pioneer Group of Companies to liquidate the dues under the financial assistance granted by it and a one time settlement was arrived at between the parties after due deliberations. The complainant has also filed different summary suits in the Board of Nominees Court for recovery of outstanding dues. It is further submitted that, as per the understanding, the applicants' group of companies has to pay only Rs.26.50 crores and now only Rs.13.20 crores remain outstanding to be paid by the applicants. As against that, there are number of immovable properties mortgaged with the bank by the applicants which, according to the learned senior counsel, amounting to more than 2 and 1/2 to 3 times the amount of outstanding dues.

10. Further, it is submitted that the applicant of Cri.Misc.Appln.No.2859 of 2003 has already deposited Rs.3.00 crores directly with the complainant bank in compliance of the directions contained in the order dated 8-5-2003 at the time of releasing the applicant on temporary bail. According to learned senior counsel, as per the say of the prosecution, total advances made to the applicants are totalling to Rs.37.50 crores. When the complainant approached the Board of Nominees Court, the applicants were directed to pay Rs.16.20 crores which has been confirmed by the State Co-Operative Tribunal. As per the argument advanced by the learned counsel for the applicants, out of which, during the pendency of these applications, applicants have paid substantial amount and are ready and willing to pay the remaining amount. In these circumstances, it is submitted that the applicants may be released on bail for the purpose of fulfilling the undertaking filed in this Court. For that, according to him, even complainant bank is also agreeing as the ultimate intention of the bank is to see that all its dues are recovered. It is submitted that the approach of the bank at the time of deciding the matter before court below was different while at present the complainant bank is also eager in getting its money back and, therefore, the bank has also no objection in releasing the applicants on bail. It is further submitted that in this matter, practically many of the accused including the real culprits have been released either by this Court or by the court below and, therefore, applicants may also be released on bail treating on par with them. Further, the investigation is

over and charge-sheet is submitted since long and the case is based only on documentary evidence and, therefore, tampering with the evidence or winning over the witnesses may not arise at all still however, Court can also keep in mind the safety of the complainant bank by imposing certain stringent conditions so as to see that evidences are not tampered with or witnesses are won over. It is a general complaint and still investigation qua certain other accused is going on and hence, trial will take its own course and therefore, it is requested that applicants may not be kept behind bars as an undertrial prisoners. It is submitted that the applicants are genuine borrowers who have entered into genuine loan transactions with the bank and have tried to repay the loan but due to change in circumstances it could not be repaid and, therefore, they may not be compared with other borrowers who have obtained loans in collusion with the Board of directors and office bearers of the bank by submitting forged documents. Moreover, it is submitted that they are neither Directors nor office bearers of the bank and hence, they may also not be treated on par with Chairman, Managing Director, etc. of the bank but be treated as simple borrowers. It is also submitted that in such type of cases, many of the accused persons are being released on bail by this Court as well as the court below based on the assurance or undertaking given by them to the Court or the bank as to the repayment schedule and hence also, it is prayed that they may be released on bail.

11. Learned Public Prosecutor, Mr.A.D.Oza, has mainly objected granting of these applications contending that applicants and their allied companies have obtained loans to the tune of Rs.37.50 crores from the complainant bank and they are the major borrowers and because of their negligence in repaying the loan, the bank has gone into liquidation. Investigation is as yet not over qua other accused and hence, if the applicants are released on bail, they will certainly interfere in the investigation being influential persons of the society. Moreover, the consent terms arrived at between the parties to repay the outstanding amount during the pendency of trial subject to its final outcome are not sufficient. It is, therefore, requested that these applications be rejected.

12. The argument advanced by the learned counsel appearing for the original complainant bank, Mr.R.J.Dave, is that pursuant to the consent terms purshis, Ahmedabad District Co-Operative Bank is already having decree to the tune of Rs.21.00 crores and odd in its favour passed against the complainant bank wherein complainant bank has

remortgaged properties of the applicants and now consent terms have been arrived at. In these circumstances, his bank has no objection if the applicants are released on bail with certain terms and conditions keeping in mind the larger interest.

13. Whereas learned Senior Counsel, Mr.K.G.Vakharia for Mr.Tushar Mehta, appearing on behalf of the respondent No.2-Ahmdabad District Co-Operative Bank Ltd., has mainly argued that the respondent No.2 being the secured creditor has no objection if the applicants are released on bail but the amount deposited by the applicant pursuant to the order dated 8-5-2003 passed while granting temporary bail to the applicant of Cri.Misc.Appln.No.2859 of 2003 may be ordered to be given to the respondent No.2. He has shown me the relevant paragraph No.5 of the said order which is as under:

> "The complainant Bank is hereby directed not to part with the amount which may be deposited by the petitioner in any manner and deposit the same in a separate account, till further orders of this Court."

He has also shown me term (3) of the consent terms reduced in writing by way of undertaking filed in Special Civil Application No.332 of 2004 by the applicants. Term (3) reads as under:

> "(3) The petitioners agree and undertake to order of this Hon'ble Court directing the Visnagar Bank to transfer Rs.3 crores to Ahmedabad District Co-operative Bank which is at present lying with Visnagar bank which is paid by the petitioner No.2 as per the order passed in Criminal Miscellaneous Application No.2859 of 2003."

It is his contention that since the respondent No.2 is the secured creditor and as agreed vide term (3) above, the respondent No.2 is entitled to get the aforereferred amount and hence, necessary order may be passed to that effect.

14. Before proceeding with the matter, it is required to be kept in mind that in a petition being Special Civil Application No.332 of 2004 preferred on behalf of the debtors during the pendency of these applications, the applicant of Cri.Misc.Appln.No.10615 of 2003 and others have filed an undertaking pursuant to the consent terms arrived at between the parties. The undertaking reads

thus:

"The petitioners with the consent of the loanees, file this undertaking before this Honourable Court and beg to undertake to this Hon'ble Court as under:-

(1) The petitioners agree that the ADC Bank is entitled to encash the security and adjust the payment made by us towards the amount due from Visnagar Nagrik Sahakari Bank and on this payment, our security stands released.

(2) The petitioners agree and undertake to pay to the Ahmedabad District Co-operative Bank Ltd. a total sum of Rs.16.20 crores towards the discharge of the securities of lands at Godhavi and Thaltej given by Visnagar Co.Op.Bank Ltd. against their borrowing from Ahmedabad District Co-operative Bank.

(3) The petitioners agree and undertake to order of this Hon'ble Court directing the Visnagar Bank to transfer Rs.3 crores to Ahmedabad District Co-operative Bank which is at present lying with Visnagar bank which is paid by the petitioner No.2 as per the order passed in Criminal Miscellaneous Application No.2859 of 2003.

(4) That the entire land situated at Village Thaltej admeasuring 70000 sq.yds. mortgaged to Visnagar bank and assigned to Ahmedabad District Co-operative Bank by Visnagar Bank shall be allowed to be paid by owner/petitioners thereof. Both the Banks shall issue No Objection Certificate in favour of petitioners for the purpose of appropriate documentation. The petitioner agree to make the payment of balance amount i.e. to say Rs.13.20 crores as under:-

(a) The amount of Rs.5 crores shall be paid by petitioners to ADC Bank before 31st March, 2004 as under:-

i) Payment of Rs.1 crore 10/2/2004
ii) Payment of Rs.1 crore 28/2/2004
iii) Payment of Rs.1 crore 10/3/2004
iv) Payment of Rs.1 crore 20/3/2004
v) Payment of Rs.1 crore 30/3/2004

The petitioners shall issue the post dated cheques for the amount referred above totalling Rs.5.00 crores in the name of The Ahmedabad District Co-operative bank with an undertaking to this Hon'ble Court that the same will be honoured on their respective due dates. The post-dated cheques will be issued within 10 days from today. The credit of the same shall be given by the Visnagar Bank in the loan account of 13 loanees after the ADC Banks gives credit advice to Visnagar Bank.

(C) That the petitioners further agree and undertake to this Hon'ble Court that they shall pay the remaining amount of Rs.8.20 crores to the Ahmedabad District Co-op. Bank subject to both banks issuing No Objection Certificate in respect of sale of agricultural land at Godhavi Taluka Sanand and entire land of Bodakdev which is mortgaged to the Banks. The said amount of Rs.8.20 crores shall be aid within a period of 12 months from 1st April, 2004 to 31st March, 2005 in monthly instalments of Rs.65 lacs for 11 months and last instalment of Rs.115 lacs. The petitioners will give the post dated cheques as aforesaid in the name of Ahmedabad District Co-operative Bank totalling to Rs.8.20 crores drawn in the name of Ahmedabad District Co-operative Bank within 10 days from today with an undertaking that the same shall be honoured on their respective due dates. however, the credit for the same shall be given by Visnagar bank in the loan account of 13 loanees.

(D) The petitioners file this undertaking as an understanding given by the respondent Banks that the Ahmedabad District Co-operative Bank and Visnagar Bank, on payment of Rs.16.20 crores as above shall release their charge on mortgaged property of land situated at Village Thaltej admeasuring 70000 sq.yds. mortgaged to Visnagar Bank and assigned to ADC Bank by Visnagar Bank, on payment of entire amount of Rs.16.20 crores as agreed upon by the petitioners in this undertaking shall release and leave their charge over the entire agriculture land which is mortgaged to the Bank at Godhavi, Sanand Taluka and the entire land situated at Bodakdev forthwith immediately and unconditionally.

2. This undertaking given to the Court is

without prejudice to their rights and contentions against Visnagar Bank and also without prejudice to the pending Civil and Criminal proceedings before the board of Nominees Court and Civil Court against and/or filed by Visnagar Bank and other legal proceedings pending before the appropriate court in respect to the dispute in question. No dispute, however, persists or survives between the petitioners, the loanees and the ADC Bank on compliance with all the terms of this undertaking.

3. This is final settlement so far as the dispute between the petitioners and ADC Bank is concerned. The petitioners and the loanees agree and undertake to withdraw all proceedings including the suit for damages against the Ahmedabad District Co-operative Bank and not to file any further proceedings.

The present undertaking is filed on behalf of all the petitioners and 13 loanees of Visnagar Bank and the signatory is the person who is duly authorised to file this undertaking on their behalf and he undertakes to file the undertakings of other petitioners and loanees within 15 days from today in this Hon'ble Court."

15. In view of the aforesaid undertaking filed in the matter, this Court (Coram: K.M.Mehta,J.) vide order dated 20-1-2004 disposed of the said Special Civil Application. Vide para 3 of the order, the Court has directed the petitioner to act as per the undertaking given to the Court.

16. It is also required to be kept in mind that even the applicants were ready and willing to repay the amount in question while passing the order dated 9-4-2003 by the learned Addl. City Sessions Judge, Ahmedabad, in Cri.Misc.Appln.No.614 of 2003 and hence, the learned Judge on page 18 of its order has observed as under:

"It is though ensured that even if the land does not fetch the amount undertaken the same shall be paid in 18 months, as the Godhavi land given towards securities and the part of it being demanded back by the applicant is as submitted to the Court is barren and saleability appears to be a difficult proposition as the same is situated at a distance and that precisely was the reason when land at Thaltej was given towards

security instead.

Keeping the applicant under the custody may not serve the useful purpose as the Court case would take a long time to proceed and trial may also be protracted with voluminous evidence but, the complainant bank in the instant case has on one hand though welcome any payment that may be received to increase its liquidity, it has also resisted the bail application, not to mention absence of no objection endorsement to the grant of bail to the applicant. Not that the Court needs to depend its decision on the will of the complainant party but, in the face of resistance of the complainant, that aspect needs to be taken into account."

17. It is also required to be borne in mind that as per the consent terms, the applicant of Cri.Misc.Appln.No.10615 of 2003 and others have paid the amount of Rs.3.00 crores within the stipulated period of three months. It may be stated that charge-sheet has been filed since long qua applicant of Cri.Misc.Appln.No.2859 of 2003 whereas supplementary charge-sheets have been filed qua other applicants.

18. For the purpose of deciding these matters, following points are kept in mind by this Court. It is revealed from the record and proceedings and the arguments advanced by the learned counsel for the respective parties that applicants, who are managing the affairs of Pioneer Group of Companies, have obtained loans totalling Rs.37.50 crores for the period ranging between August, 1998 and March, 2000 and part of the loans has been repaid by them. However, facts remain that Board of Directors of the bank were dissolved on 13-8-2002 when he bank has become weak. By the time when complaint was filed by the complainant on 30-8-2002, the aforereferred amount remained unpaid by the Pioneer Group of Companies. Hence, bank has filed civil suit being Lavad Suit in the Board of Nominees Court wherefrom they have obtained various protective orders for recovering its dues if decree would be passed in their favour in future. At the time of permitting the applicants to defend in the suit, condition of depositing Rs.16.20 crores was imposed and which has been confirmed by the State Co-Operative Tribunal.

19. It is prima-facie established that in all Rs.13.30 crores have been paid by the applicants as is reflected in the order passed by this Court in Special

Civil Application No.332 of 2004 pursuant to an undertaking filed by the applicant of Cri.Misc.Appln.No.2859 of 2003 and others in that matter. As per the say of the applicants, amount outstanding is to the tune of Rs.26.50 crores while as per the say of the bank, it is more than Rs.37.50 crores. Even various securities are also pledged with the bank by the applicants. Investigation qua present applicants is over since long and respective charge sheet and supplementary charge sheets have been filed qua the applicants. However, investigation qua some other accused is as yet not completed and, therefore, there is rare possibility of finally disposing of criminal case in the near future. Most of the evidences are documentary in nature and same are with the investigating agency forming part of charge-sheet and hence, possibility of tampering with the evidence and trying to winning over the witnesses may not arise. However, if some conditions such as restraining them from entering into the premises of the bank etc. are imposed, ends of justice would be met. It is to be noted that applicants are in judicial custody since long and if they are not released on bail, it will be a pretrial conviction and as per the settled law, it cannot be done. Moreover, various civil proceedings are going on between the parties and various orders securing the future decrees have been obtained by the complainant bank.

20. It may be stated here that due to explosion of various scams in the Co-operative Banks in the State of Gujarat, many of the co-operative banks have gone into liquidation as a consequence of which, poor depositors have suffered a lot. It is seen that the apex body and office bearers of the bank had not taken any reasonable care while advancing loans and hence, when the banks have gone into liquidation, can the genuine borrowers be compelled to pay all their dues at a stretch as a condition precedent for releasing them on bail and each and every alleged scam is required to be weighed by the Court independently after examining the nature of transaction, period of loan taken, repayment schedule, etc. and decided independently keeping in mind all the aspects?

21. Having regard to the above, it prima-facie appears that in the present case, various loans have been obtained by the applicants for their allied group of companies and part repayment has been made by them and when the bank became weak, it was found that Rs.37.50 crores were outstanding from the applicants' group of companies for which, civil as well as criminal

proceedings are initiated and various orders are obtained by the bank for the purpose of protecting its interest. Over and above, even during the pendency of the criminal proceedings, Rs.13.30 crores have been repaid by the applicants to the complainant bank and they have agreed to repay further amount of Rs.13.20 crores to the bank and it appears that as yet civil disputes have not finally come to a close. It is to be noted that applicants are not on the Board of Directors or are office bearers of the bank but appear to be borrowers and hence, their case cannot be equated with them and has to be treated differently.

22. Hence, this Court cannot prima-facie agree with the argument advanced by the learned Public Prosecutor that applicants cannot be released on bail till the whole loans are repaid by them. I may say that person cannot be shotgunned at a gunpoint by saying that unless the full amount taken as advances is repaid, he may not be released on bail. While passing the order, Court should keep various other aspects of the matter also in mind and cannot allow the matters to be decided at the desire or mercy of Public Prosecutor. However, Court should decide the matters depending upon the facts and circumstances of each case. It is required to be noted that other accused including Directors and other borrowers have been released on bail by this Court as well as the trial Court and, therefore, the present applicants are entitled to be released on bail even on the ground of parity.

23. As far as the request by the learned Senior Counsel for the respondent No.2 for ordering the amount deposited by the applicant pursuant to the order dated 8-5-2003 passed at the time of granting temporary bail to the applicant of Cri.Misc.Appln.No.2859 of 2003 to be paid to the respondent No.2 is concerned, this Court would not be able to order for the same more particularly in these matters filed for bail under Sec.439 of the Code of Criminal Procedure even if they are legally entitled being secured creditors. Since these are the amounts paid by the applicants towards their outstanding dues and are lying in a separate account, the concerned bank is at liberty to deal with the same as per its rules and regulations.

24. Considering the submissions made on behalf of the parties, and having regard to the circumstances and facts of the case, these applications are allowed and the applicants are ordered to be released on bail in connection with Crime Register No.I-452 of 2002 registered with Naranpura Police Station for the offences

alleged against them in these applications on each of them executing a bond of Rs.50,000/-(Rupees Fifty Thousand only) each with one surety each of the like amount to the satisfaction of the lower Court and subject to the conditions that shall,

a) not take undue advantage of liberty or abuse their liberty;

b) not try to tamper or pressurize the prosecution witnesses or complainant in any manner;

c) maintain law and order and should co-operate the investigating officers;

d) not act in a manner injurious to the interest of the prosecution;

e) furnish the present and permanent address of their residence to the I.O. and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of this Court;

f) not enter into the premises of the bank without prior permission of the bank or the court except for repayment of the loan as per the consent terms;

g) mark their presence before the concerned Police Station once in a month more particularly between 1st and 10th of the month between 10.00 a.m. and 2.00 p.m. for twelve months;

h) not leave the limit of State of Gujarat without prior permission of the Court;

i) surrender their passport, if any, within a week to the lower Court; and

j) file an undertaking to the effect that they shall abide by the consent terms filed by the applicant and others in Special Civil Application No.332 of 2004. In case of committing any breach of consent terms, otherside is at liberty to pray for cancellation of bail.

25. If breach of any of the above conditions is committed, the Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter.

26. Bail before the lower Court having jurisdiction try the case.

27. Rule is made absolute. Direct service is permitted.

28. The observations by this Court being prima-facie ones made for the purpose of deciding these matters shall not prejudice the parties in trial.

29. Office is directed to place a copy in each matter.

(R.P.DHOLAKIA,J.)

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